



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2007-1092; FRL-9994-65-Region 5]**

**Air Plan Approval; Michigan; Permit To Install Public Hearing  
Provisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving certain changes to the Michigan State Implementation Plan (SIP). This action relates to changes to the Permit to Install requirements for public participation of permitting actions. Additionally, the action contains changes to the rule which address permit emission limits that are enforceable as a practical matter.

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2007-1092. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Constantine Blathras, Environmental Engineer, at (312) 886-0671 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Constantine Blathras, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0671, [Blathras.constantine@epa.gov](mailto:Blathras.constantine@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

II. State Submittal

III. What Action is EPA Taking?

IV. Incorporation by Reference.

V. Statutory and Executive Order Reviews.

**I. Background**

Section 110(a) (2) (C) of the Clean Air Act requires that the SIP include a program to provide for the "regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved." This includes a program for permitting construction and modification of both major and minor sources that the state deems necessary to protect air quality. The State of Michigan's minor source permit to install rules are contained in Part 2 (Air Use Approval) of the Michigan Administrative Code. Changes to the Part 2 rules were submitted on November 12, 1993; May 16, 1996; April 3, 1998; September 2, 2003; March 24, 2009; and February 28, 2017.

Michigan originally submitted its Michigan R 336.1205 (rule 205) as a revision to its Part 2 SIP on May 16, 1996. The most recent version of rule 205 was submitted to EPA on March 24, 2009 and has a State effective date of June 20, 2008. EPA published a proposed approval of all Part 2 changes, except rule 205, on August 15, 2017 (82 FR 38651). EPA took no action to approve rule 205 at that time. Most recently, EPA approved changes to the Part 2 rules (except rule 205) in a final approval dated August 31, 2018 (83 FR 44485). In this action, EPA is approving revisions to the SIP for Michigan rule 205 and 324.5511(3) of the Michigan Natural Resources and Environmental

Protection Act. Rule 205 is titled "Permit to install; approval." and is a section of the Part 2 air use approval rules of the Michigan Administrative Code that specifies the public participation requirements for issuance of air pollutant construction permits. Michigan Act 451, Part 55, section 324.5511(3) defines the permitting actions requiring public comment and public hearing opportunities.

## **II. State Submittal**

1) R 336.1205 (Rule 205) of Michigan's Part 2 Air Permit Rules

Rule 205 requires permits to install which include limitations that restrict the potential to emit from a stationary source, process, or process equipment to a quantity below that which would otherwise constitute a major source or major modification under any part of the Part 2 air permit rules. Permits to install must contain adequate emission limits that are enforceable as a practical matter; with a consideration to the time-period, production, emission, usage and/or operational limits that restrict the source's potential to emit in order to demonstrate compliance.

Michigan rule 205 describes the content and public participation process for the Michigan Department of Environmental Quality (MDEQ), as the permitting authority, to act on certain permits which need to be "federally enforceable" or enforceable as a practical matter. Additionally, the rule

also prescribes these requirements for any permit issued under Section 112 of the Clean Air Act. This rule incorporates guidance published by EPA in the Federal Register on June 28, 1989 (54 FR 27274) on limiting a source's potential to emit. The rule applies only to sources and modifications defined as "major" under Federal regulations and to sources which would be subject to the "major" requirements except for conditions contained in the permit which limit the potential to emit to less than the applicable emission thresholds. Sources which accept conditions which limit the potential to emit to something less than the true design capacity of the equipment being installed are referred to as "synthetic minor" sources.

Rule 205 specifies that the draft permit is subject to the public participation process specified in section 324.5511(3) of Michigan Act 451. The requirements of section 324.5511(3) are reviewed and further described below. Lastly, Michigan, at its discretion, may approve a permit to install that includes limitations restricting the potential to emit of the stationary source without meeting the requirements of section 324.5511(3) if the emission limitations restrict the potential to emit of the source to less than 90% of the quantity referenced in the applicable requirement.

(2) 324.5511(3) of Michigan Act 451

In its May 1996 submittal, MDEQ requested that all of Part 55 of Act 451 of the 1994 Michigan act be approved as a revision to the Michigan SIP in addition to rule 205 and other sections of Michigan's Part 2 air permit program rules. EPA did not act on the request to include Part 55 of the Michigan act into the Michigan SIP, nor did we approve rule 205. Upon EPA's review of the submittal, we determined that the other sections of the Part 55 act, such as 324.5506, pertain to the Michigan operating permits program. EPA approved the mechanism for Michigan's title V operating permits program but did not approve its operating permits rules into the SIP because that program has a different approval mechanism under the Clean Air Act. Additionally, section 324.5511(3) references consent orders and the public notice opportunity for those actions. Actions related to consent orders are not being approved into the State's SIP.

On December 19, 2018, Michigan submitted a clarification letter to EPA specifying that it only intended to submit a selection of section 324.5511(3) of the Natural Resources and Environmental Protection Act 451 of 1994 as part of the revision with Michigan rule 205. Michigan rule 205 references the above-mentioned rule 324.5511(3) at R 336.1205(1)(b) citing, "A draft permit has been subjected to the public participation process specified in section 324.5511(3) of the act." EPA is approving

the selection of section 5511(3) into the Michigan SIP as submitted by the State in their December 19, 2018 letter. The selected language as submitted removes references to Michigan's operating permits program and consent order requirements which are not being approved into the SIP, nor are they required to be approved into the SIP. Whereas section 5511(3) contains provisions related to New Source Review (NSR), the operating permits program, and consent orders, this action is not intended as a revision to Michigan's SIP language pertaining to its title V operating permits program or to actions related to consent orders, but only for NSR construction permitting purposes.

EPA requires that major sources and major modifications to major sources subject to the Prevention of Significant Deterioration of air quality and those sources impacting nonattainment areas be subject to public participation requirements, including a public comment period and opportunity for a public hearing. EPA already approved Michigan's major source air permitting program and its associated public participation requirements, found in Michigan rule R 336.2817, on March 25, 2010 (75 FR14352) in accordance with the requirements found in 40 CFR 51.166. Sources subject to Part 19, New Source Review for major sources impacting nonattainment areas, are required to obtain a permit subject to the permitting provisions of Michigan rules Part 19, which meet the

requirements found in 40 CFR 51.165(a) and (b), and rule 201 of the Part 2 air permit rules.

Approving Michigan's rule 205 and section 324.5511(3) of the Michigan act as a revision to the Michigan SIP will strengthen the existing State public notice requirements for public participation for air permits. As stated in Michigan's letter, "These additions will strengthen the Michigan SIP by formalizing the public participation process for all permits issued pursuant to Part 55 and R 336.1201, as well as major source prevention of significant deterioration and nonattainment NSR permits to install."

Section 324.5511(3), paragraphs (a), (b), and (c) specify the requirements for permit notification and sets the public comment period to at least 30 days with an opportunity for a public hearing with at least a 30-day notice. The current SIP required NSR public participation process provides for only a 21-day public notice and comment period. The Federal permit public participation requirements are only applicable for major source and major modifications in both attainment and nonattainment areas and not the minor source permitting program. These approved provisions of rule 205 and section 324.5511(3) further strengthen the already approved minor air pollutant construction permitting program by adding a public notice requirement for those sources above 90% of the quantity



referenced in the applicable requirements which would constitute a major source or major modification and by prescribing the permit emission limitations which will make the synthetic minor air permit practically enforceable. Michigan will continue to exercise its discretion by making draft permits available for public comment which are below the 90% quantity in the applicable requirements for a major source or major modification.

(3) Proposed approval and comments received

On March 27, 2019, EPA published an action proposing approval of Michigan rule R336.1205 and 324.5511(3) of Michigan Act 451 (84 FR 11464). The comment period for the proposed approval ended April 26, 2019. EPA received two comments via the regulations.gov website during the comment period.

Commenters submitted comments that generally were in support of this proposed action. One commenter noted that the requirement for public hearing being put into place in Michigan needs to be country-wide and not just limited to communities that demand it after damage has already happened. The commenter also raised concerns with the oil and gas companies not requiring public notice for drilling operations. The Federal major source construction permitting rules require that all major sources of air pollution be subject to a public participation process including a 30-day public comment period and opportunity for a

public hearing. States are required to adopt requirements that are at least as stringent as the Federal applicable air permitting requirements. The State of Michigan issues air permits pursuant to its regulations including all applicable Federal requirements, with their associated public notice and comment period requirements.

### **III. What Action is EPA Taking?**

EPA is approving Michigan rule R 336.1205, "Permit to install; approval" and portions of section 324.5511(3) of Michigan Act 451 of 1994 into the Michigan SIP.

### **IV. Incorporation by Reference.**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Michigan Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov), and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as

of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

## **V. Statutory and Executive Order Reviews.**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

---

<sup>1</sup> 62 FR 27968 (May 22, 1997).

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or

environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b) (1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b) (2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 21, 2019.

Cheryl L Newton,  
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Section 52.1170 is amended:

a. In the table in paragraph (c) by adding an entry for “R 336.1205” after the entry for “R 336.1204” under the heading “Part 2. Air Use Approval”; and

b. In the table in paragraph (e) by adding an entry for “List of permit applications; list of consent order public notices; notice, opportunity for public comment and public hearing required for certain permit actions.” after the entry for “Regional Haze Progress Report”.

The additions read as follows:

**§ 52.1170 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-APPROVED MICHIGAN REGULATIONS**

Michigan citation	Title	State effective Date	EPA approval date	Comments
* * * * *				
Part 2. Air Use Approval				
* * * * *				
R 336.1205	Permit to install; approval.	6/20/2008	[insert date of publication in the Federal Register],	



			[Insert Federal Register citation]	
*	*	*	*	*

\* \* \*

(e) \* \*

# **EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS**

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
* * *	* * *	*		
List of permit applications; list of consent order public notices; notice, opportunity for public comment and public hearing required for certain permit actions.	Statewide	12/19/2018	[insert date of publication in the Federal Register], [Insert Federal Register citation]	Includes: letter from Michigan Department of Environmental Quality Director C. Heidi Grether to Regional Administrator Cathy Stepp, dated 12/19/2018, along with an enclosed selection of Section 5511 (3) of Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.
* * *	* * *	*		

[FR Doc. 2019-11407 Filed: 5/30/2019 8:45 am; Publication Date: 5/31/2019]